



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

John Lee, Chairman
Suzanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member
Drew Delaney, Associate Member

June 3, 2019

DECISION - BOARD OF APPEALS CASE NO. 01-19

APPLICANT:
Patricia Pizzano

FILE

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LOCATION OF PROPERTY INVOLVED:

98 Summit Avenue, Walpole and shown on the Assessors Map as Lot No. 35-272, Residence B Zone.

APPLICATION FOR:

A **Special Permit** under Section 9:4.A of the Zoning By-Laws/Determination under M.G.L. Chapter 40A, Section 6 to allow the proposed reconstruction and expansion of an existing non-conforming single-family residence; and

A **Determination** under Section 9:2.G(4) of the Zoning By-Laws to allow the existing dwelling to be demolished and reconstructed so that the use will not be considered "abandoned".

On March 6, 2019 a Public Hearing was held in the Richard Stillman Community Room in the Walpole Police Station, 50 South Street, for the purpose of receiving information and voting upon a decision as to the granting of **Special Permits** and making **Determinations** to Patricia Pizzano. The public hearing was continued to March 20, 2019, April 3, 2019, and May 29, 2019 at which time the Board closed the public hearing.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Associated Member

A motion was made by Murphy, seconded by Coffey, to make a **Determination** pursuant to Section 9:2.G(4) of the Zoning By-Laws to allow the existing dwelling at 98 Summit Avenue to be demolished and reconstructed so that the use will not be considered “abandoned.”

The vote was **(5-0-0) in favor**, therefore the **Determination** application is hereby **GRANTED subject to the following conditions** (Lee, Murphy, Coffey, Fitzgerald, Delaney voting):

CONDITIONS:

- 1) The Applicant shall obtain a demolition permit prior to the commencement of work.
- 2) All demolished materials shall be either reused or disposed of in accordance with local, state, and federal laws and regulations.
- 3) Reconstruction of the home shall commence within two years of the date of this decision.

REASONS FOR DECISION:

Pursuant to Section 9:2.G(4) of the Zoning By-Law (and relevant case law), the applicant seeks an explicit recognition and **Determination** from the Board of their intention to demolish the existing legally nonconforming residential structure for the purposes of preparing the site for a reconstructed residential structure. The applicant intends to proceed promptly with this demolition and reconstruction of the residential structure. The applicant requested a determination from the Board under Section 9:2.G(4) and, therefore, the applicant’s voluntary demolition of the structure consistent with this decision, is not evidence of abandonment of the nonconforming structure, and the Board finds that the nonconforming structure has not been abandoned.

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A motion was made by Murphy, seconded by Coffey, to grant a **Determination** under MGL 40A Section 6, Paragraph 1 to allow the proposed reconstruction and expansion of an existing non-conforming single-family residence at 98 Summit Avenue.

The vote was **(5-0-0) in favor**; therefore the application for a **Special Permit** is hereby **granted, subject to the following conditions**: (Lee, Murphy, Coffey, Fitzgerald, Delaney voting)

CONDITIONS:

1. As stipulated by the Applicant at the public hearing the new house will be constructed substantially consistent with the plan entitled “98 Summit Avenue Plot Plan of Land in Walpole, MA” dated January 15, 2019, revised through April 2, 2019 and prepared by Legacy Engineering LLC.

2. This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.

REASONS FOR DECISION:

The Board concludes that the provisions of Section 9.4.A of the Zoning Bylaw was not applicable to the proposed reconstruction of the existing non-conforming single-family residential structure, because that Section of the Bylaw does not address reconstruction of a structure. Rather, the provisions of M.G.L. Chapter 40A Section 6, paragraph 1 were found to be the most appropriate relief. It is the finding of the Board that the applicant was able to meet the requirements of M.G.L. Chapter 40A Section 6, paragraph 1 in that:


- *a zoning ordinance...shall not apply to structures or uses lawfully in existence...but shall apply to any change or substantial extension...except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.*

The existing single-family structure sits on a non-conforming lot due to insufficient frontage and area. The existing structure is also non-conforming due to insufficient front yard setback and it extends into the adjacent private way on the right side. The proposed single-family dwelling will meet all setback and coverage requirements, thereby eliminating certain nonconformities and not increase any existing nonconformities. The proposed reconstructed structure is only one-story and will be consistent with surrounding uses. Given these facts, the Board finds that the proposed reconstruction of a new house to replace the existing therefore does not increase the nonconforming nature of said structure. It is noted that while the applicant appears to own the fee in the half of the two adjacent unimproved private ways adjacent to the lot as a result of the Derelict Fee Statute, as noted by the Appeals Court in Sears v. Marshfield, 73 Mass.App.Ct. 913, 914 (2009), the court held that such fee land area could not be counted towards required zoning lot areas. The Board concludes that such areas also should not be counted towards required setbacks and the applicant has revised the plan to meet the required setback to the edge of the right-of-way.

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MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on May 29, 2019 and filed with the Town Clerk on June 10, 2019.